PROMOTING BETTER DISPUTE DECISION-MAKING WITH AN AI TOOL BUILT ON RPS THEORY

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ABSTRACT

Traditional theories of negotiation and mediation rely on rigid models, false dichotomies, and confusing terminology that fail to reflect the complexity of real practice. This Article critiques those theories and introduces Real Practice Systems theory as a more accurate and practical alternative. RPS Theory conceptualizes negotiation and mediation as sequences of professional judgment shaped by context, experience, and goals rather than as idealized or linear processes. It promotes a realistic and ethically responsible practice by encouraging reflection, intentional process design, and adaptability. The Article introduces RPS Coach, a free artificial intelligence tool built on ChatGPT. It is designed to promote good decision-making by parties, lawyers, mediators, educators, and program administrators. It helps users prepare, analyze, reflect, and improve their practice habits over time. The Article concludes by considering the promise and limitations of AI in dispute resolution and offers a vision for AI tools that enhance rather than replace human judgment.

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INTRODUCTION

This Article introduces a new generative artificial intelligence (AI) tool designed to help people think more clearly and act more intentionally in legal disputes. The Real Practice Systems (RPS) Negotiation and Mediation Coach (RPS Coach) builds on a theoretical framework developed over the past three decades.[1] Its primary goal is to maximize the quality of decision-making by parties and professionals in negotiation and mediation.[2] It promotes preparation, communication, learning, and dispute system design.[3] It can be used by a wide range of users, including parties, lawyers, and mediators, as well as faculty, trainers, alternative dispute resolution (ADR) program administrators, students, and trainees.[4]

The RPS Coach Project[5] grew out of several earlier lines of scholarship. It began with my studies of collaborative law, which is a process to satisfy client interests through early negotiation by using 'collaborative lawyers' who represent clients only in negotiation, not litigation.[6] In interviews with

1. *See generally* John Lande, *Real Practice Systems Project Annotated Bibliography* (Univ. of Mo. Sch. of L., Legal Stud. Rsch. Paper No. 2023-16, 2023) [hereinafter *RPS Annotated Bibliography*], https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4650828 [https://perma.cc/7FFP-LHJC] (describing publications relevant to Real Practice Systems theory).

2. *See infra* Part III.

3. *See id.*

4. *See* John Lande, *How I Learned to Stop Worrying and Love the Bot: What I Learned About AI and What You Can Too* 4–9 (Univ. of Mo. Sch. of L., Legal Stud. Rsch. Paper No. 2025-23, 2025) [hereinafter *Love the Bot*], https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5254156 [https://perma.cc/RD9R-PK3W]; John Lande, *Getting the Most from AI Tools: A Practical Guide to Writing Effective Prompts* 5–11 (Univ. of Mo. Sch. of L., Legal Stud. Rsch. Paper No. 2025-24, 2025) [hereinafter *Writing Effective Prompts*], https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5254164 [https://perma.cc/G8DA-8EAG].

5. *See generally* John Lande, *RPS Coach Project: A Growing Library About a Valuable AI Tool* (Univ. of Mo. Sch. of L., Legal Stud. Rsch. Paper No. 2025-19, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5224461 [https://perma.cc/G3Z6-55K9] (summarizing articles and blog posts that: explain RPS Theory, describe the knowledge base and functions of RPS Coach, and offer practical guidance for its use in dispute resolution, writing, and legal education).

6. *See generally* John Lande, *Possibilities for Collaborative Law: Ethics and Practice of Lawyer Disqualification and Process Control in a New Model of Lawyering*, 64 OHIO ST. L.J. 1315 (2003). Collaborative law is a negotiation process in which parties agree not to pursue litigation during the negotiation process and to disqualify their collaborative lawyers from representing them if they do litigate. *Id.* at 1322. I was particularly intrigued by two features of the process. It actively involves parties in negotiation and begins the process at the outset of a case. *Id.* at 1328. This flips deeply embedded litigation norms that limit party involvement and defer negotiation until discovery is largely complete.

respected lawyers in traditional (non-'collaborative') practice, I found that some lawyers regularly initiate early negotiation without formal process agreements.[7] In another study, I found that negotiation of procedural and substantive issues often occurs throughout pretrial litigation, rather than in a single dramatic settlement event at the end of litigation.[8]

I combined this focus on early dispute resolution with a long-standing interest in helping disputing parties make high-quality decisions.[9] I co-authored *Litigation Interest and Risk Assessment: Help Your Clients Make Good Litigation Decisions* to help lawyers prepare their clients for negotiation and mediation.[10] It includes a three-part framework: (1) expected court outcomes, (2) tangible costs of continued litigation (such as legal fees), and (3) intangible costs of continued litigation (such as stress, relationship damage, and distraction from other activities).[11] Ideally, lawyers involve clients in assessing their cases and planning the case

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JOHN LANDE, LAWYERING WITH PLANNED EARLY NEGOTIATION: HOW TO GET GOOD RESULTS FOR CLIENTS AND MAKE MONEY vii-viii (2d ed. 2015).

7. *See* John Lande, *Good Pretrial Lawyering: Planning to Get to Yes Sooner, Cheaper, and Better*, 16 CARDOZO J. CONFLICT RESOL. 63, 71–74 (2014) [hereinafter *Good Pretrial Lawyering*]. *See generally* John Lande, *The Movement Toward Early Case Handling in Courts and Private Dispute Resolution*, 24 OHIO ST. J. ON DISP. RESOL. 81 (2008) (identifying early case handling as an important phenomenon in a range of court and private dispute resolution processes); PLANNED EARLY DISPUTE RESOLUTION USER GUIDE (A.B.A. SECTION OF DISP. RESOL. 2013) (providing practical guidance for business executives and lawyers); John Lande & Peter W. Benner, *Why and How Businesses Use Planned Early Negotiation*, 13 U. ST. THOMAS L.J. 248 (2017) (analyzing how businesses use planned early dispute resolution systems); John Lande, *Survey of Early Dispute Resolution Movements and Possible Next Steps* (Univ. of Mo. Sch. of L., Legal Stud. Rsch. Paper No. 2021-06, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3832282 [https://perma.cc/QRM4-LU26] (surveying related early dispute resolution movements involving judges, court administrators, lawyers, and neutrals); John Lande, *Possibilities for Early Dispute Resolution*, *in* DISCUSSIONS IN DISPUTE RESOLUTION (Art Hinshaw et al. eds., 2025) (describing how my research about collaborative law led to my scholarship about early dispute resolution generally).

8. *See* John Lande, *A Framework for Advancing Negotiation Theory: Implications from a Study of How Lawyers Reach Agreement in Pretrial Litigation*, 16 CARDOZO J. CONFLICT RESOL. 1, 13–14 (2014) [hereinafter *A Framework for Advancing Negotiation Theory*].

9. *See* John Lande, *How Will Lawyering and Mediation Practices Transform One Another?*, 24 FLA. ST. U. L. REV. 839, 843, 868–79 (1997) (advocating techniques encouraging parties' "high-quality consent"); John Lande, *Toward More Sophisticated Mediation Theory*, 2000 J. DISP. RESOL. 321, 321 (2000) [hereinafter *Toward More Sophisticated Mediation Theory*] (suggesting the term "high-quality decision-making" to reflect the fact that parties sometimes decide *not* to reach agreement).

10. *See generally* MICHAELA KEET, HEATHER HEAVIN & JOHN LANDE, LITIGATION INTEREST AND RISK ASSESSMENT: HELP YOUR CLIENTS MAKE GOOD LITIGATION DECISIONS (2020).

11. *See generally id.* at 65–82.

strategy from the outset of representation.[12]

A recurring insight from these earlier projects is the importance of preparation prior to formal negotiation or mediation. Parties and practitioners often need to investigate facts, identify goals, assess risks, weigh options, assess timing, decide who should be involved in which roles, and develop communication strategies.[13]

Although I initially drew from traditional negotiation and mediation theories in my work,[14] I became increasingly dissatisfied with them. I found them oversimplified, misleading, and incomplete.[15] These theories rely on false dichotomies, focus narrowly on only part of negotiation and mediation processes, and use confusing terminology.[16]

This dissatisfaction led me to develop Real Practice Systems Theory—a more accurate and complete framework for understanding negotiation and mediation in legal cases. RPS Theory is designed to reflect real-world complexity. Unlike traditional theories that rely on stylized roles and simplified models,[17] RPS Theory emphasizes the variability, individuality, and situational dynamics of actual practice.[18]

I operationalized RPS Theory by developing structured checklists

12. *See generally id.* at 99–126. Michaela Keet, Heather Heavin & John Lande, *The Importance of Quantifying Intangible Litigation Costs*, 38 ALTS. TO HIGH COST LITIG. 17, 26–27 (2020) (describing methods of valuing intangible costs).

13. John Lande, *Real Practice Systems Project Menu of Mediation Checklists* 6–8 (Univ. of Mo. Sch. of L., Legal Stud. Rsch. Paper No. 2023-17, 2023) [hereinafter *Mediator Checklists*], https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4967728 [https://perma.cc/U5CR-VU4X]; John Lande, *Real Practice Systems Project Menu of Checklists for Attorneys in Mediation* 4–10 (Univ. of Mo. Sch. of L., Legal Stud. Rsch. Paper No. 2024-30, 2024) [hereinafter *Attorney Checklists*], https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4967728 [https://perma.cc/6EV3-F84Q]. *See generally* John Lande, *The Critical Importance of Pre-Session Preparation in Mediation* (Univ. of Mo. Sch. of L., Legal Stud. Rsch. Paper No. 2022-15, 2022), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4306617 [https://perma.cc/S8WA-M7KL]; John Lande, *Real Mediation Systems to Help Parties and Mediators Achieve Their Goals*, 24 CARDOZO J. CONFLICT RESOL. 347, 360–61 (2023) [hereinafter *Real Mediation Systems*]; *Good Pretrial Lawyering*, *supra* note 7, at 71–74; John Lande, *How Can Courts—Practically for Free—Help Parties Prepare for Mediation Sessions?*, 2024 J. DISP. RESOL. 82 (2024) [hereinafter *Courts Prepare Parties for Mediation*] (describing local federal district court rules relevant to preparation for mediation sessions).

14. *See, e.g.*, PLANNED EARLY DISPUTE RESOLUTION USER GUIDE 57–71 (A.B.A. SECTION OF DISP. RESOL. 2013).

15. *Id.* at 68–69.

16. *See infra* Parts I.B, I.C, I.D.

17. *See infra* Parts I.B, I.C.

18. *See infra* Part II.B.

for lawyers and mediators to assist in preparation, decision-making, and reflection.[19] I used the checklists to train RPS Coach, which prompts users to analyze their situations, consider options, identify information needs, make decisions, and reflect upon how their systems of practice influence their choices.[20] Users can adapt the tool to their specific contexts by customizing its guidance and communication strategies.[21] Beyond individual disputes, RPS Coach can assist ADR program administrators in designing and managing programs.[22] Faculty can also use it as a teaching tool to help students develop skills and habits of reflection essential to effective dispute resolution.[23]

RPS Coach is one of a growing number of AI tools designed to help parties address problems in dispute resolution.[24] This Article outlines its theoretical foundation, commitment to clear language, and focus on promoting high-quality decision-making by disputing parties. It invites scholars, educators, and practitioners[25] to reflect on the values that should guide negotiation and mediation practice, especially the responsibility to promote informed decision-making. It challenges the dispute resolution field to reconsider how those values can be applied in real-world systems, routines, and conversations.

This Article begins by identifying the limitations of traditional negotiation and mediation theories.[26] Then, it summarizes RPS Theory, which forms the foundation for RPS Coach,[27] and explains how RPS

19. *See Mediator Checklists, supra* note 13; *Attorney Checklists*, *supra* note 13.

20. John Lande, *RPS Coach Is Biased—and Proud of It* 2 (Univ. of Mo. Sch. of L., Legal Stud. Rsch. Paper No. 2025-17, 2025) [hereinafter *Biased and Proud of It*], https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5213572 [https://perma.cc/66TS-YWZH].

21. John Lande, *A Practical Guide for Using the RPS Negotiation and Mediation Coach* 1 (Univ. of Mo. Sch. of L., Legal Stud. Rsch. Paper No. 2025-15, 2025) [hereinafter *A Practical Guide*], https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5199282 [https://perma.cc/Y3T7-H4CR].

22. *Id.*

23. *Id.*

24. John Lande, *When AI Comes to the Table: How Tech Tools Will Change ADR*, 43 ALTS. TO HIGH COST LITIG. 107, 107–08 (2025) [hereinafter *AI Comes to the Table*]. Some AI tools focus on automating litigation documents or providing analytics about judges and outcomes. *Id.* In contrast, RPS Coach helps users reflect, prepare, and make thoughtful choices about negotiation and mediation. It does not predict results or generate documents. Instead, it prompts users to improve their process design and decision-making habits. *See A Practical Guide, supra* note 21.

25. In this article, 'practitioners' refers to lawyers and mediators.

26. *See infra* Part I.

27. *See infra* Part II.

Coach can be used in practice, teaching, and dispute system design.[28] Finally, the Article concludes by emphasizing how AI tools can help people tailor dispute resolution strategies to reflect their values, goals, and circumstances while also promoting clearer thinking, better preparation, and more conscious choices.[29]

I. PROBLEMS WITH TRADITIONAL NEGOTIATION AND MEDIATION THEORIES

A. Oversimplified Models

Psychologist Kenneth Kressel's article "How Do Mediators Decide What to Do? Implicit Schemas of Practice and Mediator Decisionmaking" crystallized my critiques of simplified theoretical models of negotiation and mediation.[30] His article summarizes conclusions from three in-depth studies, as follows:

> We have learned from these investigations that tacit knowledge—which we have variously described under headings like mediator "styles," "mental models," or "schemas of practice,"—plays a powerful role in such decisionmaking, is often at striking variance with what practitioners consciously believe they are doing, and can be gotten at by methods that help practitioners access their tacit decisionmaking knowledge.[31]

Formal practice models do influence mediators, but their effects are limited:

> Formal models are generic and therefore insufficiently precise—no formal model can account for the uniqueness

28. *See infra* Part III.
29. *See infra* Conclusion.
30. *See Real Mediation Systems*, *supra* note 13, at 366–67 (citing influence of Kressel's article on the development of RPS Theory, which initially focused only on mediation). *See generally* Kenneth Kressel, *How Do Mediators Decide What to Do? Implicit Schemas of Practice and Mediator Decisionmaking*, 28 OHIO ST. J. ON DISP. RESOL. 709 (2013).
31. *See* Kressel, *supra* note 30, at 709.

> of different conflicts/disputants and the highly unpredictable and rapid interactions unfolding in front of the mediator. Formal models are inevitably sifted through each mediator's unique beliefs, values, and experiences. It is these idiosyncratic characteristics that are likely to shape what mediators actually deliver and what clients experience. Much of mediator decisionmaking inevitably occurs at an implicit, non-conscious level, whereas formal models exist largely at the explicit, conscious level.[32]

Mediators' mental models are: "largely tacit and highly idiosyncratic ideas the mediator holds about the role of the mediator; the goals to be attained (and avoided), and the interventions that are permissible (and are impermissible) in striving to reach those goals."[33] Much of what mediators do becomes "'highly 'automated,'" outside of their conscious awareness.[34]

Professor Kenneth Kressel distinguished between simple and complex models. Simple models depend heavily on formal practice models with "clear, linear behavioral scripts."[35] Mediators using these models display little curiosity about their actions.[36] In contrast, "complex schemas were far less reliant on a formal model of practice, involved a more diverse and nuanced set of behavioral scripts, entailed more decisional uncertainty and stress for the mediator, and were associated with more efforts at reflective learning."[37]

My research on negotiation and mediation theory fits neatly within Professor Kenneth Kressel's framework. Many traditional theories of negotiation and mediation suffer from internal inconsistencies and misleading simplifications. Traditional models are often presented as—or simply assumed to be—coherent frameworks.[38] Closer examination, however, reveals conceptual confusion, especially regarding what

32. *Id.* at 721.
33. *Id.* at 722.
34. *Id.* at 716.
35. *Id.* at 726.
36. *Id.* at 727.
37. *Id.* at 728.
38. *See* Robert A. Baruch Bush, *Beyond the Toolbox: Values-Based Models of Mediation Practice*, 24 CARDOZO J. CONFLICT RESOL. 255, 258, 260–61 (2023) (arguing that distinct mediation models reflect coherent purposes, practices, and premises).

practitioners actually do.[39]

B. Negotiation Theory's False Dichotomy and Narrow Focus

Negotiation theory often frames the process in rigid, dichotomous terms fitting one of two mutually exclusive models—negotiators are either positional bargainers or interest-based negotiators.[40] In one model, negotiators exchange strategic counteroffers, trying to maximize partisan advantage. In the other model, parties identify interests and generate options to create joint value. They use good communication and creative tactics to avoid impasse and achieve efficient resolutions.[41]

In reviewing prominent negotiation texts, I identified six variables that define these models: (1) concern for the other side, (2) the communication process, (3) value creation, (4) tone, (5) use of power, and (6) source of norms.[42] Traditional theory assumes that these variables are tightly correlated and cluster at opposite extremes depending on the model. In positional negotiation, parties are completely self-interested.[43] They negotiate through a series of counteroffers, display a hostile tone, use power to achieve their goals, and rely on extrinsic norms, particularly expected court outcomes. Interest-based negotiation is described as the opposite. Under this model, parties seek solutions that satisfy both parties' interests, explicitly identify their interests and possible options, treat each other respectfully, and rely on reason to reach agreement.[44]

Actual negotiations, however, sometimes do not conform to these patterns. In practice, many negotiations involve a mix of both approaches. In my study of 32 cases of real negotiations, some cases fit the traditional models, but many did not. Variables often fluctuated during a case, were applied differently for different issues, or did not cluster as theorized.[45]

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39. *See infra* Parts I.B., I.C.

40. *See A Framework for Advancing Negotiation Theory*, *supra* note 8, at 16–17 (explaining that negotiation texts typically describe two models, though they use various names for them).

41. John Lande, *Teaching Students to Negotiate Like a Lawyer*, 39 WASH. U. J.L. & POL'Y 109, 113 (2012) (footnote omitted).

42. *A Framework for Advancing Negotiation Theory*, *supra* note 8, at 9.

43. *See generally id.* at 47–48.

44. *Id.* at 47–48.

45. *Id.* at 17, 19, 27–29, 34–36, 42–55.

Moreover, the two-model framework omitted a third approach I observed frequently, which I called 'ordinary legal negotiation.'[46] In this model, unlike positional and interest-based negotiation, lawyers do not try to maximize partisan advantage or joint gains of the parties. Instead, they work toward reasonable agreements based on shared standards—often the likely court outcome or standard practices in similar cases. The process is conversational and not structured around counteroffers or interest analysis. Eleven cases in my study included elements of this model. Yet, like the other models, it lacked internal coherence, reinforcing the need to focus on component variables rather than idealized models.[47]

Further, traditional negotiation theory focuses primarily on the final stage of the process. Focusing primarily or exclusively on the end of a case radically decontextualizes the negotiation process, treating earlier stages as practically irrelevant.[48] In real life, the earlier stages are critically important, setting the stage for the final negotiation or another resolution process.[49] The earlier stages of litigation are often full of negotiations over procedural and substantive issues. In studying how lawyers negotiated legal disputes, I found that negotiation consists of far more than just the final settlement phase. Pretrial litigation often involves a sequence of interrelated negotiations with numerous individuals, beginning with the first client interaction.[50] Indeed,

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46. *Id.* at 36–46.

47. *Id.*

48. *Id.* at 55.

49. Marc Galanter's concept of "litigotiation" highlights a core reality of civil litigation that contrasts with traditional models of negotiation. Marc Galanter, *Worlds of Deals: Using Negotiation to Teach About Legal Process*, 34 J. LEGAL EDUC. 268, 268 (1984) (emphasis in original). He defined it as "the strategic pursuit of a settlement through mobilizing the court process." *Id.* He wrote,

> On the contemporary American legal scene[,] the negotiation of disputes is not an alternative to litigation. It is only a slight exaggeration to say that it *is* litigation. There are not two distinct processes, negotiation and litigation; there is a single process of disputing in the vicinity of official tribunals . . . .

Id.

50. *A Framework for Advancing Negotiation Theory*, *supra* note 8, at 13–14. One lawyer said,

> 'It is all negotiation from the time suit is filed. You are constantly negotiating or setting up the negotiation. It doesn't just happen. You are negotiating from the outset, setting up where you want to go. You are judging [the other side] and they are judging you.' He elaborated, 'Negotiations don't occur in a week or a month. They occur in the entire time of the lawsuit. If anyone tells you they aren't negotiating, they really are. Every step in the process is a negotiation. You don't

negotiation is often integrated with communications throughout pretrial litigation, rather than occurring in a single, dramatic settlement event.[51] Moreover, traditional theory mistakenly minimizes the fact that lawyers regularly negotiate—not only with counterpart lawyers, but also with clients, co-workers, process servers, investigators, court reporters, technical experts, financial professionals, mediators, and even judges.[52]

C. Disconnect of Traditional Mediation Models from Real Practice

Mediation theory suffers from many of the same problems as negotiation theory, especially the oversimplified contrast between facilitative and evaluative models.[53] The facilitative model bundles together several distinct activities into a single model. These activities include helping parties to evaluate their case, developing and exchanging proposals, asking about strengths and weaknesses of cases, exploring consequences of settlement (including likely court outcomes), clarifying interests, and developing options to meet those interests.[54] The evaluative model combines a different set of activities by mediators: assessing the merits of each side's case, predicting likely outcomes, urging settlement, and proposing specific terms.[55]

In practice, mediators often do not stick to one model. They may draw

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call it negotiation but in effect, that's what it is.'

Good Pretrial Lawyering, *supra* note 7, at 66.

51. *A Framework for Advancing Negotiation Theory*, *supra* note 8, at 13–14.

52. *Id.*

53. This Article refers to facilitative and evaluative mediation as the traditional mediation theories because scholars and practitioners cite them more often than other mediation frameworks. *See generally* Leonard L. Riskin, *Mediator Orientations, Strategies and Techniques*, 12 ALTS. TO HIGH COST LITIG. 111 (1994); Leonard L. Riskin, *Understanding Mediators' Orientations, Strategies, and Techniques: A Grid for the Perplexed*, 1 HARV. NEGOT. L. REV. 7, 35 (1996). In 2003, Riskin published an extensive critique of the grid he developed less than ten years earlier. *See* Leonard L. Riskin, *Decisionmaking in Mediation: The New Old Grid and the New New Grid System*, 79 NOTRE DAME L. REV. 1, 10–29 (2003). Despite the critique, many dispute resolution experts ignored his concerns and the broader problems with these concepts. *See* John Lande, *How AI Can Help Mediators Say What They Really Mean*, 2026 J. DISP. RESOL. (forthcoming 2026) [hereinafter *How AI Can Help*]. For my early critiques of these models, see *Toward More Sophisticated Mediation Theory*, *supra* note 9, at 321–27; *Real Mediation Systems*, *supra* note 13, at 350–55.

54. *See Real Mediation Systems*, *supra* note 13, at 351.

55. *Id.*

on both sets of interventions at different times, depending on the case and context.[56] I invited ten experienced mediators to describe their practices in detail, including routine procedures, strategies for difficult situations, and influences on their approach. Their descriptions varied widely based on motivations, goals, party dynamics, case types, system design, and lawyer involvement.[57] Some said that traditional mediation models influenced their thinking, but only as one of many factors. No single theoretical model captured the full range of what they actually did in practice.[58] Empirical research shows no consistent differences in outcomes, disputant experiences, or attorney perceptions based on whether mediators use actions associated with facilitative and evaluative mediation.[59]

Traditional theories also focus narrowly on what occurs during the mediation session itself. Yet preparation by parties, lawyers, and mediators can significantly influence the process and its outcomes. Research Director Roselle Wissler found that parties who received more preparation from their lawyers perceived the mediation as fairer. They felt better able to express their views and influence the outcome, perceiving the mediator as more impartial, understanding, and respectful. They reported feeling less pressure to settle and were more likely to both reach agreement and perceive the outcome as fair.[60]

56. *Id.* at 352. JEAN POITRAS & SUSAN S. RAINES, EXPERT MEDIATORS: OVERCOMING MEDIATION CHALLENGES IN WORKPLACE, FAMILY, AND COMMUNITY CONFLICTS 149 (2012) ("Expert mediators cannot easily be labeled as evaluative, facilitative, or transformative in their styles or approaches. Instead, expert mediators use a plurality of mediation models and problem-solving strategies, and their preferred strategy is dependent upon the particular challenge or challenges they face.").

57. *Real Mediation Systems*, *supra* note 13, at 378–84.

58. *Id.* at 384–85, 386–87.

59. *See generally* AM. BAR ASS'N SECTION OF DISP. RESOL., REPORT OF THE TASK FORCE ON RESEARCH ON MEDIATOR TECHNIQUES 2, 14–56 (2017); John Lande, *Lessons from the ABA's Excellent Report on Mediator Techniques*, INDISPUTABLY (Nov. 1, 2017), http://indisputably.org/2017/11/lessons-from-the-abas-excellent-report-on-mediator-techniques/ [https://perma.cc/D3WY-NLSD] (analyzing Task Force findings).

60. Roselle L. Wissler, *Representation in Mediation: What We Know from Empirical Research*, 37 FORDHAM URB. L.J. 419, 432–33 (2010).

D. Terminology That Obscures Rather Than Clarifies

Professor Michael Moffitt identified a critical flaw in how scholars and practitioners often define mediation terms: over-reliance on what he called 'acontextual-prescriptive' definitions.[61] These definitions describe how people believe mediation should work (prescriptive), without grounding them in real-world variation or context (acontextual).[62] His critique of acontextual-prescriptive definitions leaves no doubt that he urges use of contextual-descriptive approaches—definitions focusing on how mediation actually works across mediators, parties, and settings.[63]

I surveyed dispute resolution experts, who expressed widely divergent understandings of the terms 'facilitative' and 'evaluative' mediation. I concluded that "[d]espite their popularity in scholarship and practice, these labels are inconsistently defined, frequently misunderstood, and fundamentally flawed."[64] Many invoke these labels as if they describe clear, universally accepted styles. In reality, mediators routinely adjust their techniques to match shifting goals, party needs, and procedural context.[65]

Negotiation terminology creates similar confusion. Competing terms describe what are essentially the same broad approaches. One approach is labeled 'distributive,' 'competitive,' 'adversarial,' or 'positional.'[66] The other is called 'interest-based,' 'principled,' 'integrative,' 'problem-solving,' or 'cooperative problem-solving.' This variation confuses not only laypeople, but also experts.[67]

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61. *See generally* Michael Moffitt, *Schmediation and the Dimensions of Definition*, 10 HARV. NEGOT. L. REV. 69 (2005). The same critique applies to negotiation terminology.

62. *Id.* at 78–82.

63. *See generally id.* at 101–02.

64. *How AI Can Help*, *supra* note 53. *See also Real Mediation Systems*, *supra* note 13, at 386–87.

65. *See supra* text accompanying notes 55–57.

66. *A Framework for Advancing Negotiation Theory*, *supra* note 8, at 16–17.

67. John Lande, *Moving Negotiation Theory from the Tower of Babel Toward a World of Mutual Understanding*, INDISPUTABLY (Feb. 6, 2017), http://indisputably.org/2017/02/moving-negotiation-theory-from-the-tower-of-babel-toward-a-world-of-mutual-understanding/ [https://perma.cc/KNK3-MR6A] (summarizing critiques from the Moving Negotiation Theory from the Tower of Babel Toward a World of Mutual Understanding symposium).

Moreover, the ubiquitous term BATNA, or best alternative to a negotiated agreement, has numerous serious flaws as used in both negotiation and mediation theory. It is widely interpreted as the outcome that will occur if parties do not reach agreement. In fact, it refers to a *process*—how a dispute will be handled if the parties do not reach agreement.[68] The outcomes of alternative processes are usually uncertain, yet people often talk about them as definite and known in advance.[69] People use BATNA as a benchmark for deciding whether to reach agreement, but focusing on the term often ignores intangible interests, which are often quite valuable.[70]

Dispute resolution experts use many other terms that carry misleading connotations and/or confuse non-experts.[71] We aspire to help parties

68. John Lande, *What's the Matter with BATNA? It's Misleading and Doesn't Help Advance Parties' Important Interests*, 43 ALTS. TO HIGH COST LITIG. 39, 39–40 (2025).

69. *Id.* at 40.

70. *Id.* at 40–41. *See also* John Lande, *Confusing Dispute Resolution Jargon*, INDISPUTABLY (Jan. 4, 2018), http://indisputably.org/2018/01/confusing-dispute-resolution-jargon/ [https://perma.cc/FBV5-PNH5] (noting that people often incorrectly think of BATNA as referring to outcomes, when it refers to processes that parties would use if they do not reach agreement); John Lande, *BATNA May Be Less Important Than You Think—and Teach*, INDISPUTABLY (Aug. 20, 2020), http://indisputably.org/2020/08/batna-may-be-less-important-than-you-think-and-teach/ [https://perma.cc/5TH8-46HD] (quoting a magistrate judge who argued that economic and other factors may be more important in parties' decision-making than expected court outcomes); John Lande, *What's a Bottom Line?*, INDISPUTABLY (Aug. 26, 2020), http://indisputably.org/2020/08/whats-a-bottom-line/ [https://perma.cc/654E-BN38] (arguing that BATNA overlooks consideration of parties' intangible interests, which should be included in their "bottom lines"). Although negotiation theory suggests that parties should use BATNA analysis defensively, they often cynically use it offensively, creating problems for parties, lawyers, mediators, educators, and students. John Lande, *BATNAs and the Emotional Pains from "Positional Negotiation,"* INDISPUTABLY (July 8, 2020), http://indisputably.org/2020/07/batnas-and-the-emotional-pains-from-positional-negotiation/ [https://perma.cc/P9W5-QGV2].

71. *See* John Lande, *Choosing to Use Good Language in the "ADR" Field* 2–11, 14–16 (Univ. of Mo. Sch. of L., Legal Stud. Rsch. Paper No. 2025-03, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5107472 [https://perma.cc/47XG-AWPG] (describing how language choices affect perceptions, reasoning, and behavior); John Lande, *Houston, We Have a Problem in the Dispute Resolution Field*, INDISPUTABLY (Oct. 30, 2022), http://indisputably.org/2022/10/houston-we-have-a-problem-in-the-dispute-resolution-field/ [https://perma.cc/A5XM-SE64] (analyzing dispute resolution terminology that confuses even experts); John Lande, *What Is (A)DR About?*, INDISPUTABLY (Jan. 13, 2015), http://indisputably.org/2015/01/what-is-adr-about/ [https://perma.cc/MD8W-FJ6S] (identifying multiple problems with the term "alternative dispute resolution"); John Lande, *Oxymorons R Us* 1–2 (Univ. of Mo. Sch. of L., Legal Stud. Rsch. Paper No. 2024-20, July 8, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4888552 [https://perma.cc/R4GR-SNR8] (describing how experienced mediators misused mediation terminology during a program at the ABA Section of Dispute Resolution's annual conference); John Lande, *We Need Clearer Dispute Resolution*

understand their situations and communicate clearly. Unfortunately, our jargon too often fails to achieve this goal—and instead confuses the very people we hope to help.

II. REAL PRACTICE SYSTEMS THEORY

A. Promoting Practical Dispute Resolution

The recurring limitations described in the preceding section—including simplistic dichotomies, obscure terminology, and a disconnect from real-life practice—suggest the need for a new theoretical framework. I summarized the problems this way:

> Our current theory is incomplete at best and seriously misleading at worst. The traditional mediation models are oversimplified, poorly mapping onto the reality of practice. They combine multiple elements that are not necessarily correlated. Many practitioners ignore them because they are confusing or not helpful. People do not understand the theoretical meanings because the terms are not consistent with commonly understood language. Arguments about what is or is not real or good mediation have spawned unhelpful ideological divisions in the field.[72]

I developed RPS Theory to better describe the reality of practice and to provide dispute resolution practitioners and parties with practical techniques for addressing problems in their cases. This theory holds that all practitioners have unique systems that grow out of their experiences and evolve over time. Their systems are based on their personal histories, values, goals, motivations, knowledge, skills, and procedures as well as the parties and the cases in their practice. They develop categories of cases,

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Language, KLUWER MEDIATION BLOG (Oct. 28, 2020), https://legalblogs.wolterskluwer.com/mediation-blog/we-need-clearer-dispute-resolution-language/ [https://perma.cc/93KN-XER8] (identifying problems with common dispute resolution terms); *Real Mediation Systems*, *supra* note 13, at 361–64.

72. *Real Mediation Systems*, *supra* note 13, at 347–49 (citing THOMAS SAMUEL KUHN, THE STRUCTURE OF SCIENTIFIC REVOLUTIONS (1962)). Although the quoted article focused solely on mediation theory, the same principles apply to negotiation theory, as discussed in this article.

parties, and behavior patterns in their cases. They use unconscious routine procedures as well as conscious strategies to deal with recurring challenges. It offers a paradigm that could succeed traditional negotiation and mediation theories.[73]

Rather than relying on the false dichotomies underlying those theories, RPS Theory is grounded in the complexity of how dispute resolution practitioners actually work. It begins with the premise that practitioners operate in highly variable environments shaped by individual judgment, organizational context, and the needs of particular participants.[74]

'Practice systems' are the interconnected routines and strategies that constitute the work of individuals and organizations,[75] involving strategies to manage aspects of their work.[76] They also establish routine ways of handling certain tasks such as pre-session procedures.[77] Practitioners' systems reflect their backgrounds, values, goals, and motivations, as well as the cases, parties, and institutional settings they deal with.[78] As Professor Kenneth Kressel observed,[79] practitioners often create mental categories to help them make sense of their work.[80] These categories may include types of parties, conflict dynamics, or procedural challenges. Practitioners draw on these categories when making decisions, sometimes without even realizing they are doing so.[81]

RPS Theory includes processes before and after negotiation or mediation sessions—not just during formal sessions. Practitioners' preparation before these sessions can profoundly influence the process

73. *Id.* at 348 (footnotes omitted).

74. In this article, 'participants' in mediation refers primarily to parties and their lawyers but may include other attendees in mediation sessions such as experts.

75. *Real Mediation Systems*, *supra* note 13, at 358–61 (describing systemic nature of mediation process). Lawyers have regular systems for representing clients in mediation. John Lande, *Theory and Practice of Mediation Representation* 8–20 (Univ. of Mo. Sch. of L., Legal Stud. Rsch. Paper No. 2024-31, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4967732 [https://perma.cc/CRM6-WYYX] (summarizing books outlining lawyers' techniques when representing clients in mediation).

76. *Real Mediation Systems*, *supra* note 13, at 358–61.

77. *Id.*

78. *Id.* at 373–84.

79. *See supra* text accompanying notes 30–33.

80. *Real Mediation Systems*, *supra* note 13, at 358–59.

81. *Id.* at 361. A survey of attorneys and mediators highlighted the importance of 'case-by-case customization' of mediation. John Lande, *Doing the Best Mediation You Can*, 14 DISP. RESOL. MAG., Spring–Summer 2008, at 43, 44 [hereinafter *Doing the Best Mediation You Can*], https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1719800 [https://perma.cc/TA5F-54EZ].

and outcomes.[82] Similarly, how participants reflect on past interactions can influence the evolution of their practice systems and shape future cases.[83]

RPS Theory treats negotiation and mediation as sequences of behaviors and decisions that unfold over time. Table 1 illustrates how lawyers, mediators, and parties may act before, during, and after mediation sessions.[84]

82. *See supra* text accompanying note 58. *See also Real Mediation Systems*, *supra* note 13, at 360. A survey by the ABA Section of Dispute Resolution's Task Force on Improving Mediation Quality found that attorneys and mediators emphasized the importance of preparation before mediation sessions. *Doing the Best Mediation You Can*, *supra* note 81, at 43.

83. *Real Mediation Systems*, *supra* note 13, at 385–86. *See also* John Lande, *How You Can Build a Mediation Model to Optimize Your Own Cases*, INDISPUTABLY (Feb. 22, 2022), http://indisputably.org/2022/02/how-you-can-build-a-mediation-model-to-optimize-your-own-cases/ [https://perma.cc/5FXK-25UK] (describing factors affecting parties' individual mediation models and "careers" of their models as they gain experience); John Lande, *How the Real Practice Systems Project Can Help Improve Mediation Quality*, INDISPUTABLY (Jan. 9, 2023), http://indisputably.org/2023/01/how-the-real-mediation-systems-project-can-help-improve-mediation-quality/ [https://perma.cc/P2G6-UZME] (arguing that reflective practice techniques may be more effective than regulatory approaches in promoting high-quality mediation). *See generally* MICHAEL D. LANG, GUIDE TO REFLECTIVE PRACTICE IN CONFLICT RESOLUTION (2d ed. 2024) (encouraging practitioners to adapt their techniques when situations don't fit their assumptions or routines).

84. Table 1 provides a theoretical overview of the mediation system for legal cases. In practice, some cases do not include all the elements displayed in Table 1. For example, some parties represent themselves. Some tasks may be performed inconsistently or ineffectively. Practitioners who regularly use negotiation and other dispute resolution processes also develop systems, though these may be less structured than those used in mediation.

Table 1. Mediation Practice Systems

Stages	Lawyers	Parties	Mediators
Case Evaluation and Client Counseling	Learn facts and evaluate case	Arrive stressed, worried, confused, angry, etc.	
	Advise clients about dispute resolution options	Lawyer conducts 'client school' to reassure, educate, coach clients etc.	
	Decide to mediate and retain mediator		
Preparation for Mediation Session	Coordinate with mediator's preparation for mediation session	Prepare with attorney	Coordinate preparation for mediation session
Mediation Session	Represent client	Decision time	Mediate
Follow-up	Follow up if needed	???	Follow up if needed

Table 1 illustrates how different participants contribute at each stage. RPS Theory highlights the agency of all participants, rather than casting mediators as the central actors during mediation sessions, as traditional mediation theory often implies.[85] RPS Theory emphasizes that parties are key decision-makers, and they are better able to make good decisions when they are well prepared.[86] It highlights the potential for lawyers and clients to work together to clarify clients' goals, assess risks, and explore acceptable options.[87] Even when mediators offer opinions during mediation sessions, it is no substitute for attorneys

85. *See supra* text accompanying note 53.

86. *RPS Annotated Bibliography*, *supra* note 1, at 20–24.

87. John Lande, *Party Self-Empowerment from Preparation for Mediation Sessions*, INDISPUTABLY (June 26, 2023), http://indisputably.org/2023/06/party-self-empowerment-from-preparation-for-mediation-sessions/ [https://perma.cc/7SSN-7HYP].

directly advising their clients.

Building on this descriptive account, RPS Theory provides a framework for improving the quality of decision-making. It encourages practitioners to be more conscious and intentional in how they approach their work, and it helps them examine why they make particular choices in particular contexts. By becoming more aware of their practice systems, practitioners can improve the quality of their processes and act more consistently with their values and ethical responsibilities.[88]

B. Tools That Promote Planning, Decision-Making, and Learning

RPS Theory promotes the development and use of tools that help practitioners plan, make decisions, and learn from their experiences. In particular, checklists for mediators[89] and lawyers in mediation[90] are especially important operationalizations of RPS Theory. They prompt practitioners to prepare thoughtfully for dispute resolution processes, participate effectively, and reflect on their experiences. However, the checklists are not scripts or rules to be followed mechanically. Practitioners must decide what to do in each moment based on the circumstances of each situation.[91]

There are two general types of checklists. Prescriptive checklists help users remember regular tasks, such as checking for conflicts of interest.[92] Inspirational checklists prompt users to consider issues when there is no unequivocally correct course of action.[93] For example, when practitioners feel stuck, they can use inspirational checklists to generate ideas for moving

88. *Real Mediation Systems*, *supra* note 13, at 388.

89. *Mediator Checklists*, *supra* note 13.

90. *Attorney Checklists*, *supra* note 13.

91. *Attorney Checklists*, *supra* note 13*,* at 2. I conducted a survey at two continuing education programs for mediators, asking what factors influence how they mediate. They most often cited participants' mindsets and behaviors, the type of case, and their own preferences for particular techniques. Notably, they did not refer to traditional mediation theories. *See* John Lande, *Why Do Mediators Mediate the Way They Do?* 6–7 (Univ. of Mo. Sch. of L., Legal Stud. Rsch. Paper No. 2024-10, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4713676 [https://perma.cc/5SMV-9CA3].

92. John Lande, *Practitioners Tell Why Real Practice System Checklists Are So Useful* 2 (Univ. of Mo. Sch. of L., Legal Stud. Rsch. Paper No. 2024-08, 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4677066 [https://perma.cc/NQD2-4SCH].

93. *Id.* at 2–3.

forward. Both types of checklists help users consider things they might otherwise overlook.

Practitioners can perform almost any of the tasks in the checklists regardless of their views about particular negotiation or mediation theories.[94] For example, lawyers may adopt cooperative or adversarial strategies depending on their clients' needs and the counterparts' behavior.[95] Mediators may help parties reflect on their goals and, when appropriate, express views about what might be helpful.[96] Similarly, parties may focus both on expected court outcomes and their intangible interests.[97] These variations are treated as normal aspects of practice rather than as deviations from the false dichotomies of traditional theories.

Rather than assuming a fixed structure for all cases, RPS Theory encourages practitioners to shape the process to fit the participants' needs and the realities of each situation. For example, the checklists could help practitioners consider processes that include multiple meetings or involve various participants at different times instead of assuming that mediation would consist of a single session with all participants.[98] The checklists also address the use of technology for communicating, scheduling, document sharing, and conducting sessions by video.[99]

In addition to promoting planning and decision making, the checklists are designed to promote professional growth. They include prompts for post-session reflection, detailed self-assessment, and engagement with colleagues through mentoring or peer discussion groups.[100] By encouraging practitioners to consider what worked well,

94. *Biased and Proud of It*, *supra* note 20, at 3.

95. John Lande, *How Can You Turn Adversarial Attorneys into Quasi-Mediators?*, 43 ALTS. TO HIGH COST LITIG. 3, 3 (2025) [hereinafter *Quasi-Mediators*] (describing attorneys who promote mutually acceptable agreements that satisfy their clients' interests and who advocate vigorously when the other side behaves badly or takes unreasonable positions).

96. *Mediator Checklists*, *supra* note 13, at 10–13.

97. *Id.* at 10–11; *Attorney Checklists*, *supra* note 13, at 5–6.

98. *Mediator Checklists*, *supra* note 13, at 6–7; *Attorney Checklists*, *supra* note 13, at 5–6.

99. *Mediator Checklists*, *supra* note 13, at 6–8; *Attorney Checklists*, *supra* note 13, at 7–9. *See* John Lande, *Technology in Real Practice Systems*, INDISPUTABLY (Jan. 21, 2024), http://indisputably.org/2024/01/technology-in-real-practice-systems/ [https://perma.cc/7RAA-MQ74] (highlighting use of technology before, during, and after mediation sessions).

100. *Mediator Checklists*, *supra* note 13, at 14–15; *Attorney Checklists*, *supra* note 13, at 13–14. John Lande, *The Artificially Intelligent RPS Negotiation and Mediation Coach* 7 (Univ. of Mo. Sch. of L., Legal Stud. Rsch. Paper No. 2025-11, 2025) [hereinafter *Artificially Intelligent RPS Coach*], https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5172420 [https://perma.cc/8WBZ-SHYD].

what could be improved, and how their routines might evolve, the tools contribute to long-term learning. In this way, the theory integrates decision-making in specific cases with broader efforts to improve practitioners' techniques over time.[101]

C. Support for Ethical Practice

RPS Theory is grounded in high standards of professional responsibility as well as practical effectiveness. It promotes ethical practice in several ways. First, it reinforces the importance of helping clients make informed decisions.[102] RPS Theory highlights practitioners' responsibility to provide meaningful support, including counseling, process design, and educational tools, so that clients understand their options and make well-informed decisions.[103]

Second, RPS Theory avoids the rigid dichotomies that have long distorted professional roles. Lawyers are not merely adversaries, and mediators are not just process facilitators.[104] Both lawyers and mediators can and should play active roles in shaping productive analyses, reducing decision errors, and promoting long-term resolutions. By focusing on what practitioners actually do—and what they can do more deliberately—RPS

101. *Biased and Proud of It*, *supra* note 20, at 3.

102. *Mediator Checklists*, *supra* note 13, at 5–6, 10–14; *Attorney Checklists*, *supra* note 13, at 4–7, 11–12. Lawyers often do not communicate effectively with their clients, making it harder for clients to make good decisions. *See generally* John Lande, *Decision-Making as an Essential Element of Our Field*, INDISPUTABLY (June 3, 2020), http://indisputably.org/2020/06/decision-making-as-an-essential-element-of-our-field/ [https://perma.cc/7TF7-MBLA]; John Lande, *Concepts That Can Help Practitioners Help Parties Make Decisions in Disputes*, INDISPUTABLY (Dec. 8, 2020), http://indisputably.org/2020/12/concepts-that-can-help-practitioners-help-parties-make-decisions-in-disputes/ [https://perma.cc/P6SZ-UBQ9].

103. *Mediator Checklists*, *supra* note 13, at 5–6, 10–14; *Attorney Checklists*, *supra* note 13, at 4–7, 11–12. John Lande, *Lawyers Are from Mars, Clients Are from Venus—and Mediators Can Help Communicate in Space*, KLUWER MEDIATION BLOG (Feb. 6, 2021), https://legalblogs.wolterskluwer.com/mediation-blog/lawyers-are-from-mars-clients-are-from-venus-and-mediators-can-help-communicate-in-space/ [https://perma.cc/FS63-CYS4] (summarizing empirical research showing frequent miscommunication between clients and lawyers). Legal clients value lawyers' 'soft skills,' such as interpersonal communication, empathy, and the ability to understand others' perspectives. *See generally* RANDALL KISER, SOFT SKILLS FOR THE EFFECTIVE LAWYER (2017); RANDALL KISER, PROFESSIONAL JUDGMENT FOR LAWYERS (2023).

104. *See Quasi-Mediators, supra* note 95; *Real Mediation Systems*, *supra* note 13, at 351–55, 384–85.

Theory offers a realistic and constructive foundation for ethical practice.

Third, it incorporates core ethical principles such as competence, truthfulness, avoidance of conflicts of interest, and protection of confidentiality.[105]

Finally, RPS Theory promotes intentional practice-system design. It recognizes that practitioners operate within broader structural constraints, including court rules and organizational policies.[106] Good practice requires conscious attention to external factors, including cultural, racial, linguistic, and power asymmetries that shape how practitioners handle disputes.[107] RPS Theory encourages users to reflect on how external factors influence their routines and choices.[108]

III. RPS THEORY IN ACTION: FROM CHECKLISTS TO AI TOOLS

A. Development of RPS Coach

RPS Theory provides a lens for understanding complexity and designing effective systems. I translated this theory into a practical AI tool to promote good decision-making—RPS Coach. I developed RPS Coach by adapting RPS Theory into a digital format using ChatGPT. It integrates the litigation interest and risk assessment framework, incorporating elements from supposedly mutually exclusive elements of negotiation and mediation theory.[109] It helps users consider expected court outcomes and a wide range of valuable intangible interests.[110] It is designed to help users avoid common decision-making errors caused by cognitive and motivational biases, such as overconfidence, confirmation bias, and loss aversion.[111] It suggests questions that help mediators elicit parties' perspectives and offers options for mediators to express opinions, with parties' consent. As a result, it helps parties,

105. *See Mediator Checklists*, *supra* note 13, at 5 (identifying ethical requirements); *Attorney Checklists*, *supra* note 13, at 4 (identifying ethical requirements relevant to negotiation and mediation).

106. *See generally Courts Prepare Parties for Mediation*, *supra* note 13 (describing local federal district court rules relevant to preparation for mediation sessions).

107. *Real Mediation Systems*, *supra* note 13, at 374–77.

108. *Id.* at 378–84.

109. KEET, HEAVIN & LANDE, *supra* note 10; *Biased and Proud of It*, *supra* note 20, at 2.

110. *Mediator Checklists*, *supra* note 13, at 10–11; *Attorney Checklists*, *supra* note 13, at 5–6.

111. KEET, HEAVIN & LANDE, *supra* note 10, at 5–9.

lawyers, and mediators develop nuanced and realistic strategies.[112]

I 'trained' RPS Coach using a collection of my publications and resources on dispute resolution, including:

- Checklists for mediators and attorneys
- The book *Litigation Interest and Risk Assessment: Help Your Clients Make Good Litigation Decisions*
- Articles on good decision-making by parties and lawyers
- Materials on negotiation, mediation, preparation, and early dispute resolution
- Resources for court-connected ADR
- Publications about legal education
- Annotated bibliographies, simulations, and practitioner tools
- Critiques of dispute resolution theories and terminology[113]

I provided detailed instructions for RPS Coach to:

- Provide clear explanations of the tool's capabilities and limitations
- Reflect ethical rules
- Use language understandable to both laypeople and experts
- Tailor advice for specific types of users
- Encourage intentional process choices
- Foster understanding of others' perspectives

112. *Biased and Proud of It*, *supra* note 20, at 3.
113. *See generally id.* at 2.

- Analyze intangible interests and possible outcomes in the absence of agreement
- Promote good decision-making by parties and practitioners
- Stimulate reflection on how people deal with disputes[114]

Using these instructions, RPS Coach translates the RPS checklists and other materials into a conversational format using prompts, scenarios, and questions that encourage planning, analysis, and self-assessment.[115] I compared responses by RPS Coach with those of 'untrained ChatGPT' using the same prompts about several dispute resolution scenarios, and I found that RPS Coach provided better responses across multiple dimensions.[116]

RPS Coach does not act as a lawyer or mediator and does not provide definitive answers or predictions. Instead, it functions as a coach—raising questions, identifying considerations, and helping users think through decisions. It suggests ideas that users can apply, modify, or disregard based on their needs.[117]

B. Key Functions of RPS Coach

RPS Coach helps users make thoughtful decisions by encouraging them to clarify their values, goals, and needs in specific situations. It promotes preparation by offering prompts to identify concrete

114. *Id.* at 3.

115. *Id.*

116. *Artificially Intelligent RPS Coach*, *supra* note 100, at 4–6. When responding to questions about a patent dispute, family matters, and a discrimination case, RPS Coach demonstrated clearer use of theoretical frameworks. It focused on party decision-making, adapted its responses to specific contexts, and addressed emotional and relational dynamics. It also provided greater depth and specificity, explicitly discussed ethical considerations, and emphasized long-term compliance and decision satisfaction. In addition, it used precise and consistent language and explained the theories that guided its suggestions. RPS Coach also gave stronger responses to parties asking about non-legal concerns, such as noisy neighbors, financial disagreements between spouses, parental frustration with a teenager missing curfew, and a child's experience of bullying at school. In these responses, it offered more helpful guidance related to personal and relationship conflicts, ongoing disputes, bullying and power imbalances, working with external authorities, and addressing challenging behavior. *Id.*

117. *Biased and Proud of It*, *supra* note 20, at 3.

objectives, set realistic expectations, and develop sound strategies.[118] A central part of its value is that it can assist a wide variety of users—including parties, lawyers, mediators, educators, and program administrators—who deal with overlapping systems of negotiation and mediation. Because these systems involve interconnected roles and institutional settings, an AI tool designed to promote good decision-making should operate across these settings. RPS Coach does so by relying on shared values about core processes—such as preparation, reflection, and informed decision-making—while tailoring its guidance to the role-specific tasks of each user.

RPS Coach can assist people in real time during negotiation or mediation sessions. Because it is available on demand and responds within seconds, users can apply it flexibly as case dynamics shift. Users can ask it to help develop agendas, identify options, prepare arguments, or respond to unexpected developments.[119]

For example, a lawyer might ask: "How should I help prepare my client before a mediation session? How can I help her consider her interests affected if the parties don't settle in mediation? How should I explain what the court might decide?" RPS Coach would use the litigation interest and risk assessment process to estimate expected court outcomes, costs, and intangible interests like reputation or emotional impact.

People can use it individually or with others. For example, a lawyer and client might use it during a break to consider their next steps. A mediator might use it during a private meeting with one side or in a joint session with

118. *Id.* For an example of how RPS Coach can assist a mediator in preparing for a difficult mediation session, see this hypothetical case chat: John Lande, ChatGPT RPS Negotiation and Mediation Coach, "I am a mediator preparing for a mediation and seek your help.", https://chatgpt.com/share/686fe887-63c0-8001-bbbf-6bcbf1930473 [https://perma.cc/ S2YQ-JCWE] (Nov. 14, 2025) (on file with the *Washington University Journal of Law and Policy*).

119. A recent study found that negotiations in which both parties used AI tools produced 84.4% greater joint gains than negotiations without such assistance. The increased joint gains were accompanied by greater information sharing (up by 28.7%), more creative solutions (up by 58.5%), and increased value creation (up by 45.3%). Yadvinder S. Rana, *When AI Joins the Table: How Large Language Models Transform Negotiations* 1 (Cath. Univ. of the Sacred Heart, Working Paper, 2024), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5049248 [https://perma.cc/PQ3F-X4WF]. The study also concluded that symmetric use of AI large language models not only promotes value creation and capture but also enhances procedural fairness by providing equal access to advanced analytical tools. *Id.* at 17.

all participants.

RPS Coach also encourages users to reflect after a session or case has ended. It offers prompts for users to debrief, analyze decisions, and consider what they might do differently in the future.[120] Over time, repeated use of the tool can help users revise their routines, refine their strategies, and build more intentional practice systems.

C. Tool Assisting Multiple Types of Users

RPS Coach lowers the barriers to entry for thoughtful practice. It is available for free to anyone with a browser and a question, regardless of background, location, or formal training. Users can access it late at night, before a meeting, or during a pause in a difficult case.

RPS Coach is designed to assist a wide range of users engaged in dispute resolution, including those working on individual cases and those involved in program design, education, and training. These users face challenges that require careful planning, reflection, and sound judgment. RPS Coach provides prompts and resources that help them explore ideas, generate drafts, analyze choices, and consider how their actions fit into broader practice systems.

For example, a court mediation program manager might ask: "What should we include in our materials to explain the mediation process to self-represented parties?" RPS Coach can suggest sample language for intake forms, informational handouts, website content, or video scripts—drawing on RPS values that promote good preparation, informed party decision-making, and intentional process design.

Lawyers can use RPS Coach to anticipate challenges, analyze risks, communicate effectively with clients, identify options, develop strategies, organize their thinking, promote informed decision-making, represent clients, and adapt to changing circumstances.[121]

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120. *Mediator Checklists*, *supra* note 13, at 14–15; *Attorney Checklists*, *supra* note 13, at 13–14.

121. *Love the Bot*, *supra* note 4, at 5–6. *Writing Effective Prompts*, *supra* note 4, at 6–7. *See generally Attorney Checklists*, *supra* note 13. A recent American Bar Association ethics opinion states that "lawyers should become aware of the [general artificial intelligence] tools relevant to their work so that they can make an informed decision, as a matter of professional judgment, whether to avail themselves of these tools or to conduct their work by other means." A.B.A. Comm. on Ethics & Pro. Resp., Formal Op. 512, 5 (2024) (discussing Generative Artificial Intelligence Tools). Indeed, "it is conceivable that lawyers will eventually have to use them to competently complete certain tasks for clients." *Id.*

Mediators can use RPS Coach to plan mediation sessions by considering how to adapt their approaches to particular cases, parties, and settings. It can help them think through how they might assist parties in communicating, identifying issues, making decisions, and drafting agreements. It can also help mediators plan logistics, technology use, and the timing and sequence of discussions. Moreover, it can help them develop process goals and agreements, consider emotional dynamics, address difficult moments, plan private meetings, and identify follow-up steps.[122]

Parties can use RPS Coach to prepare for negotiation or mediation. It can help them identify specific goals, understand others' perspectives, and analyze resolution options. It promotes thoughtful decision-making, especially when stakes are high or emotions are intense. It can help them become more knowledgeable, confident, and assertive. RPS Coach may be especially helpful for self-represented parties, who may be unfamiliar with mediation or negotiation processes. It can reduce confusion, demystify expectations, and help them prepare and participate productively.[123]

Beyond individual cases, RPS Coach is useful for professionals who design and manage dispute resolution systems. ADR program managers can use it to draft or revise program rules, prepare educational materials, evaluate program performance, and develop general procedures.[124]

Educators and trainers can use RPS Coach to develop syllabi, create assignments, and design simulations that reflect realistic challenges in practice. It provides language and frameworks to help students and trainees grasp real-world complexity. In class, it can illustrate key concepts or prompt discussion about judgment, ethics, and strategy. Scholars can use it to develop and refine their ideas.[125]

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122. *Love the Bot*, *supra* note 4, at 6; *Writing Effective Prompts*, *supra* note 4, at 5–6. *See generally Mediator Checklists*, *supra* note 13.

123. *Love the Bot*, *supra* note 4, at 6; *Writing Effective Prompts*, *supra* note 4, at 7–8.

124. *Love the Bot*, *supra* note 4, at 5–7; *Writing Effective Prompts*, *supra* note 4, at 8–9.

125. *Love the Bot*, *supra* note 4, at 5; *Writing Effective Prompts*, *supra* note 4, at 9–11. *See generally* John Lande, *Using AI to Improve Your Writing (Without Losing Your Voice)*, INDISPUTABLY (Apr. 8, 2025), http://indisputably.org/2025/04/using-ai-to-improve-your-writing-without-losing-your-voice/ [https://perma.cc/VU39-LPLT]; John Lande, *Getting Help from AI to Update Your Syllabus (Even If You Think It's Just Fine)* (Univ. of Mo. Sch. of L., Legal Stud. Rsch. Paper No. 2025-32, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5345304 [https://perma.cc/YXP5-Z8D5]; John

Students and trainees can use RPS Coach to learn practical skills, reflect on experiences, and build educational portfolios. It can help them prepare for simulations, analyze real or hypothetical cases, and think critically about their own emerging practice styles. In clinical or externship settings, it can supplement their supervision by helping them organize their thoughts and articulate their learning.[126]

D. Tool to Design Individual and Institutional Practice Systems

RPS Coach can help practitioners and organizational leaders recognize and improve the systemic nature of their work. It encourages practitioners to see their practice as part of a broader system shaped by their values, goals, and work requirements. This systems perspective is a defining feature of RPS Theory, and the AI tool can help users every day in practical and concrete ways.[127]

Practitioners generally operate within routines that develop gradually and unconsciously. These routines influence how they communicate with clients, prepare for negotiation or mediation, and respond to challenges. RPS Coach helps users articulate their assumptions and intentionally develop procedures consistent with their practice philosophies.[128]

For example, a mediator might reflect on a case that did not go as well as hoped and ask RPS Coach: "Why didn't this case work out better, and how can I improve my approach in similar situations in the future?" RPS Coach could prompt reflection on a range of issues, such as the adequacy of preparation before the session, how the process was framed at the outset, whether the mediator built sufficient trust, how emotional dynamics were handled, or whether signs of party decision

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Lande, *Teaching with AI—and Teaching Students to Use It Well* (Univ. of Mo. Sch. of L., Legal Stud. Rsch. Paper No. 2025-31, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5345300 [https://perma.cc/6E5Y-VU4B]; John Lande, *Using AI to Promote Student Learning Through Preparation for and Reflection About Simulations* (Univ. of Mo. Sch. of L., Legal Stud. Rsch. Paper No. 2025-33, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5355728 [https://perma.cc/D38J-UHLB]; John Lande, *Facing Faculty Fears About AI* (Univ. of Mo. Sch. of L., Legal Stud. Rsch. Paper No. 2025-34, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5363363 [https://perma.cc/3SEU-HQUZ].

126. *Love the Bot*, *supra* note 4, at 8–9; *Writing Effective Prompts*, *supra* note 4, at 10.

127. *See generally Real Mediation Systems*, *supra* note 13, at 358–61.

128. *See generally Mediator Checklists*, *supra* note 13; *Attorney Checklists*, *supra* note 13.

fatigue were missed. It might also suggest ways to revise the mediator's own system of practice—such as modifying intake routines, adjusting communication strategies, or building in time for personal debriefing and structured reflection.

At the organizational level, RPS Coach can help law firms, mediation programs, court-connected services, and faculty develop systematic approaches based on their values, goals, cultures, and client populations. For example, mediation programs can use it to help plan the selection and training of mediators, assignment of cases, case management procedures, and policies about desirable and unacceptable mediation techniques.[129]

E. Risks, Limitations, and Responsible Use

RPS Coach presents relatively low risks compared to other AI tools because it is designed to suggest ideas, not provide definitive answers.[130] Concerns about risks of AI in dispute resolution often focus on tools that make decisions for people or substitute for human judgment in substantive matters. For example, Professor Amy Schmitz identifies a range of serious risks in AI systems that analyze evidence, predict legal outcomes, or deliver binding rulings—especially when such systems are opaque or unaccountable.[131]

RPS Coach does not evaluate parties' positions, make predictions, recommend outcomes, make decisions for users, offer legal advice, or act as a mediator. Rather, it helps users reflect on their own goals, strategies, and process choices.[132]

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129. *Real Mediation Systems*, *supra* note 13, at 360–61; *Love the Bot*, *supra* note 4, at 6–7.

130. The level of risk varies depending on the types of outputs that users seek. Requests for quotations or citations to specific authorities present the highest risks. Requests for descriptions of general principles or syntheses present moderate risks. Requests for brainstorming suggestions carry relatively low risks. Alan Z. Rozenshtein & Kevin Frazier, *Large Language Scholarship*, 20 FIU L. REV. (forthcoming 2026) (manuscript at 49–50) (on file with the *Washington University Journal of Law and Policy*), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5200768 [https://perma.cc/43AY-ZJWL].

131. *See* Amy J. Schmitz, *Responsible Use of AI in Civil Dispute Resolution*, *in* THE CAMBRIDGE HANDBOOK ON AI AND CIVIL DISPUTE RESOLUTION (forthcoming 2025 or 2026) (manuscript at 5–12) (on file with the *Washington University Journal of Law and Policy*), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4903238 [https://perma.cc/RW9R-3PZS].

132. *A Practical Guide*, *supra* note 21, at 1–2.

Like any AI tool, it can be helpful or misleading depending on the users' skill, experience, and judgment.[133] Users should treat RPS Coach's responses as suggestive and subject to review. In legal or mediation contexts, this includes considering how well its suggestions fit with ethical obligations, client goals, and institutional constraints.[134]

Tools like this could present risks because their output appears fluent and coherent. RPS Coach can generate responses quickly and seem authoritative, so some users may be tempted to treat it as if it were offering correct answers. It may sometimes generate incomplete, ambiguous, or inaccurate responses, especially if users' questions or the context are unclear.

Responsible use of RPS Coach involves recognizing its limitations. At the beginning of every chat, it states:

> Like all AI systems, RPS Coach sometimes makes mistakes. You should review the output, assess its accuracy and usefulness, ask follow-up questions, and decide what to use. You should check other sources if the accuracy is in doubt. RPS Coach does not provide legal advice or act as a mediator. You may hire an attorney or mediator if you need their help. RPS Coach is an AI tool, not a therapist, emotional companion, or crisis service. If you are in distress or need immediate help, please contact 988 (US) or local emergency services.[135]

It also instructs users to avoid inputting real names or other identifying information, and it explains how users can prevent their inputs from being used to train ChatGPT.

Further research and testing are needed to understand how tools like RPS Coach can be used most effectively in different settings. This

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133. John Lande, *Responsible Realism About Artificial Intelligence: How AI Is Shaping Legal and Dispute Resolution Practice, Education, and Scholarship* 4–7 (Univ. of Mo. Sch. of L., Legal Stud. Rsch. Paper No. 2025-28, 2025), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5309439 [https://perma.cc/9PBM-9RAG] [hereinafter *Responsible Realism About Artificial Intelligence*] (explaining principles for responsible use of AI tools). RPS Coach is one of many AI tools now available or likely to emerge that are designed to assist with dispute resolution tasks. *See generally AI Comes to the Table, supra* note 24.

134. *See generally Mediator Checklists*, *supra* note 13; *Attorney Checklists*, *supra* note 13.

135. John Lande, ChatGPT RPS Negotiation and Mediation Coach (Nov. 20, 2025) (on file with the *Washington University Journal of Law and Policy*).

includes studying how various types of users interact with it, what kinds of errors are most common, and how users respond to those errors. Also, research should examine the potential for these tools to influence professional roles, client expectations, and the design of dispute resolution systems.

Promoting AI literacy is one of the best safeguards against potential problems created by AI tools. Technical solutions are likely to be unreliable, especially in the near term. To deal with AI risks, users should learn how to recognize and manage problems produced by AI tools. This requires skill and ongoing practice, especially considering that these tools remain relatively unsophisticated and AI platforms continue to evolve.[136]

Despite these limitations, RPS Coach represents a promising example of how AI dispute resolution tools can embody values of ethical awareness, reflective practice, and decision support. As the field develops new technologies, the key is to use them to enhance, rather than replace, human judgment.

CONCLUSION

This Article argues that negotiation and mediation are shaped by the day-to-day decisions of practitioners and parties, not just by general theoretical models. RPS Theory frames this work as practical judgment shaped by experience and based on particular contexts and practitioners' values. Rather than relying on idealized models or misleading typologies, this approach highlights how individuals build and revise their own systems of practice, including the routines, categories, and strategies they use to address recurring challenges.

RPS Coach reflects this broader view. It is designed to help users shape dispute resolution strategies that reflect their values, goals, and circumstances. It offers a structured process to promote good planning, decision-making, and reflection based on a theory of practice that values conscious choice and recognizes the variability of real-world dispute contexts. With checklists, prompts, and conversational guidance, it can help

136. *Responsible Realism About Artificial Intelligence*, *supra* note 133, at 4–5.

a wide range of users think more clearly about their roles, responsibilities, and options.

We are still in the early stages of AI development, including in dispute resolution.[137] Tools like RPS Coach can help bridge the gap between theory and practice. They can assist users to make thoughtful choices, prepare more effectively, and learn from experience.

The benefits of RPS Coach extend beyond handling individual cases. It provides opportunities to help people design systems to promote fair and efficient dispute resolution processes. It can help teachers and trainers prepare students and practitioners for the reality of practice. It also creates opportunities for academics to analyze practitioner behavior, test approaches for preparation and communication, and refine frameworks for teaching and practice.

As we shape the future of dispute resolution, real innovation may lie not in automation, but in how we guide human judgment. Tools like RPS Coach invite us to prepare, decide, and reflect more deliberately. They can challenge us to bring more clarity, purpose, and ethical rigor to our daily work—not by doing our work for us, but by helping us do it better.

137. *See generally* John Zeleznikow, *Using Artificial Intelligence to Provide Intelligent Dispute Resolution Support*, 30 GRP. DECIS NEGOT. 789 (2021).